

MEMO ENDORSED

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DANIEL LIBIT,

Plaintiff,

-v-

UNITED STATES MILITARY ACADEMY and
ARMY WEST POINT ATHLETIC ASSOCIATION,

Defendants.

No. 23 Civ. 00845 (KMK)

**STIPULATION AND
ORDER ON
CONSENT**

Plaintiff Daniel Libit (“Libit”), Defendant United States Military Academy (“USMA”) and Defendant Army West Point Athletic Association (“AWPAA”) (collectively, the “Parties”), by and through their undersigned counsel, hereby stipulate and agree as follows:

WHEREAS in 2022, Libit submitted several FOIA requests (collectively, the “Requests”) addressed to both Defendants, and another addressed to USMA individually, seeking various records concerning USMA’s intercollegiate athletics programs; and

WHEREAS USMA and AWPAA denied the Requests at the administrative level; and

WHEREAS Libit filed a complaint in February 2023 alleging that AWPAA is an agency within the meaning of FOIA and all of its records are “agency records” subject to FOIA disclosure, and further alleging that all of the records sought from both defendants are agency records within the custody and control of USMA; and

WHEREAS AWPAA denies that it is an agency subject to FOIA and Defendants deny that they have violated FOIA, but Defendants desire to resolve their dispute with Libit over the

question of whether AWPAA is subject to FOIA without the cost, burden and disruption of further litigation over this issue;

NOW, THEREFORE, the Parties hereby stipulate and agree that:

1. AWPAA will search for records within its custody and control that are responsive to the Requests addressed to AWPAA as if it were subject to FOIA, and produce responsive, non-exempt records, and will consult with USMA or refer records or requests to USMA for processing as appropriate, pursuant to a production schedule to be agreed upon by the Parties.

2. In response to future FOIA requests addressed to it, by any party, AWPAA will similarly search for responsive records within its custody and control, produce responsive, non-exempt records, as if it were subject to FOIA and all of its procedures, such as the time limits imposed by FOIA, and will consult with USMA or refer records or requests to USMA for processing as appropriate, and will do so unless and until AWPAA or a successor organization obtains a judicial declaration that it is not an agency within the meaning of FOIA. AWPAA reserves its right to seek such a judicial declaration, upon notice to Libit or his counsel, in the future.

3. USMA will search the records within its custody and control that are responsive to the Requests addressed to USMA, and will consult with AWPAA or refer records or requests to AWPAA for processing as appropriate, and produce responsive, non-exempt records, pursuant to a production schedule to be agreed upon by the Parties;

4. After the productions of responsive records are complete, the Parties will promptly meet and confer to determine whether any issues remain for litigation, and if so, propose a schedule for briefing to the Court on any unresolved issues;

5. The Court will retain jurisdiction over the above-captioned case pending the resolution of any unresolved issues.

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By: David A. Schulz

David A. Schulz, Supervising Attorney
(S.D.N.Y. Bar No. DS-3180)

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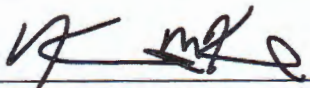
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The Parties are directed to provide a status report by
7/20/23.

So Ordered.



HON. KENNETH M. KARAS

Dated: 6/20/23